

UNITED STATES OF AMERICA)
)
 v.)
)
 DEMETRIUS LAMONT MCCULLERS)


Case 5:96-cr-00051-BO Document 205 Filed 09/08/11 Page 1 of 2

States v. Burd, 86 F.3d 285, 288 (2d Cir. 1996); *United States v. Powell*, 266 F. App'x 263, 266 (4th Cir. 2008). In *Powell*, on which Mr. McCullers relies, the defendant had pleaded guilty to a state court offense which was not a qualifying offense under the career offender statute. *Id.* at 265. The state court's docket entry erroneously recorded that Powell was convicted of a crime other than that to which he pleaded guilty. *Id.* Solely as a result of the error, Powell had been designated a career offender under the Sentencing Guidelines. *Id.* By contrast, Mr. McCullers has failed to allege that his designation as a career offender occurred as a result of a clerical error, and this Court has already reconsidered his sentence in response to his motion under 18 U.S.C. § 3582 (c)(2). Therefore, Mr. McCullers' motion is denied.

CONCLUSION

For the foregoing reasons, Defendant's Motion is DENIED and the United States' Motion to Dismiss is DENIED as MOOT.

SO ORDERED, this the 7 day of September, 2011.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE